

MANUEL N. ARANGO)	
Claimant)	
)	
V.)	
)	
SHELTER DISTRIBUTION)	
Respondent)	Docket No. 1,068,707
)	
AND)	
)	
TRAVELERS INDEMNITY COMPANY)	
Insurance Carrier)	

Claimant requested review of the September 12, 2016, Award by Administrative Law Judge (ALJ) Thomas Klein. This is a post-award proceeding for medical benefits. The case has been placed on the summary docket for disposition without oral argument.

Jonathan E. Voegeli of Wichita, Kansas, appeared for claimant. Vincent A. Burnett of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

The Board has considered the post-award record and adopted the stipulations listed in the Award.

The ALJ found claimant failed to prove the injury to his right upper extremity is the prevailing factor in his current request for medical treatment to his left upper extremity. The ALJ denied claimant's need for medical treatment.

Claimant argues both his uncontroverted testimony and the credible evidence prove the prevailing factor causing his need for additional medical treatment to his left upper extremity is the May 30, 2012, work-related accident. Additionally, claimant requests this matter be remanded to the ALJ for a determination of attorney fees related to the post-award proceedings.

Respondent maintains the ALJ's Award should be affirmed. Respondent argues the credible evidence shows claimant is not in need of additional medical treatment related to his left upper extremity. Further, even if claimant did warrant treatment, respondent contends the May 30, 2012, accident is not the prevailing factor for such need.

The sole issue for the Board's review is: is the May 30, 2012, work-related accident the prevailing factor causing claimant's need for medical treatment to his left upper extremity?

FINDINGS OF FACT

Claimant sustained injury to his right upper extremity while working for respondent on May 30, 2012. As a result, claimant began treating with Dr. Bernard Hearon. Dr. Hearon first performed surgery on claimant's right wrist on August 26, 2012. He then performed two additional surgeries on claimant's right wrist on April 1, 2013, and October 9, 2013. Dr. Hearon released claimant in May 2014.

Claimant testified he began experiencing symptoms in his left wrist between his second and third surgeries. Dr. Pedro Murati examined claimant on May 28, 2014, at claimant's counsel's request. Dr. Murati provided diagnoses related to claimant's right wrist, but made no mention of claimant's left upper extremity. Dr. Pat Do examined claimant on September 17, 2014, for purposes of a court-ordered independent medical examination. He did not note left wrist complaints in his examination report. Claimant stated he told every physician he visited about his left wrist complaints, but was told "that I was in there for my right wrist. They said they couldn't treat my left and they couldn't write nothing about my left."¹

Claimant began treatment with Dr. Aly Gadalla in November 2014. Claimant testified he complained to Dr. Gadalla when he initially began treatment, but Dr. Gadalla did not begin to document his left wrist complaints until March 19, 2015. Claimant explained:

I told them I was having pain on my wrist, and he would tell me it's because of overuse; and throughout the months that I have been seeing him, I've showed him how purple the fingers have gotten and I told him it went numb and it's shooting all the way to the top. And that's when he started putting it on the records. He said you need to get that checked out, he said, because most likely if there's no blood running through the fingers, they're going to dry out on you, he said if there's something bad in that wrist.²

¹ P.A.H. Trans. (Aug. 18, 2015) at 22.

² *Id.* at 23-24.

The parties entered into an Agreed Award on February 12, 2015, in which claimant was found to have a 16 percent impairment to his right upper extremity at the arm level.

Claimant returned to Dr. Murati, per his counsel's request, on July 1, 2015. Claimant's chief complaints included numbness, tingling, swelling and constant pain in his left wrist and left first/second fingers, loss of grip in his left hand, and difficulty sleeping due to pain. After a review of claimant's available history, medical records, and performing a physical examination, Dr. Murati concluded claimant has a probable left TFCC tear and left carpal tunnel syndrome, both secondary to overuse.³ Dr. Murati recommended restrictions and additional testing. He opined claimant's diagnoses were a direct result of his work-related injury sustained in 2012. Dr. Murati wrote:

The claimant sustained a work-related accident to his right upper extremity on or about 06-01-12, later resulting in left upper extremity pain as a result of overuse. . . . He has no significant pre-existing injuries that would be related to his current diagnoses. He has significant clinical findings that have given him diagnoses consistent with overuse injury. This claimant sustained enough permanent structural change in the anatomy of his left upper extremity which caused pain necessitating treatment. Therefore, it is under all reasonable medical certainty and probability that the prevailing factor in the development of his conditions is a result of overuse.⁴

Dr. Chris Fevurly examined claimant on October 1, 2015, at respondent's request.⁵ Claimant complained of an onset of pain, swelling and discoloration of his left hand beginning February or March 2015. Dr. Fevurly noted claimant remains completely dependent on his left hand and cannot really use his right hand for activity. Dr. Fevurly reviewed claimant's history, medical records, and performed a physical examination. He concluded:

The current left hand/wrist examination is possibly consistent with left sided carpal tunnel syndrome vs. left wrist TFCC tear or both conditions. There is no evidence on current examination for CRPS I.

A review of the scientific literature as outlined in Chapter 33 (pages 757 to 768) of the The AMA Guide to the Evaluation of Disease and Injury Causation, 2nd edition, Melhorn **do not support** that median nerve entrapment or TFCC tear is at a higher incidence based in the claim of favoring the opposite limb. Repetitious hand use (alone) is not a risk factor for carpal tunnel syndrome but there is an increase in

³ See *id.*, Cl. Ex. 1 at 2.

⁴ *Id.* at 3.

⁵ Dr. Fevurly first examined claimant on January 22, 2015, related to claimant's right wrist; however, that report was not in evidence.

CTS when high repetition is combined with high force; however, the claimant does not perform high force activity since his original date of injury to the right hand/wrist. [Emphasis in original.]

There is no support for a left wrist and hand condition resulting from “overuse” of the left hand from the limited amount of ability to use the right hand.

. . .

He may want to pursue further testing in the left arm for possible peripheral nerve entrapment or TFCC tear but if so desired, this should be done under his personal health insurance.⁶

Dr. J. Mark Melhorn examined claimant for purposes of a court-ordered independent medical evaluation on December 8, 2015. Claimant’s chief complaint was his painful left hand. Dr. Melhorn reviewed claimant’s medical records, history, took x-rays, and performed a physical examination. Claimant also completed a pain diagram, or white drawing. Dr. Melhorn testified, “The white drawing as currently marked is non-anatomical. It implies symptom magnification and it is not supported by the clinical examination and/or the nerve conduction study.”⁷ The nerve conduction study was completed December 15, 2015. Dr. Melhorn concluded:

On [claimant] NCT testing normal. After reviewing the clinical examination his subjective complaints and nerve conduction study that was completed on 12/15/15 with the NCT indicating a normal pattern with no median nerve involvement I’m unable to determine a pathoanatomic etiology for his subjective complaints of numbness with regard to the left hand. I referenced the white drawing left hand completed by the individual on 12/08/15 and his visual analog pain scale of 10 on a level of 10 but while being seen and examined in the office demonstrated no pain behavior.⁸

Dr. Melhorn testified:

Q. In your opinion, based on your evaluation of [claimant], do you have an opinion whether or not his reported subjective complaints with regard to the left upper extremity are causally related under the prevailing standard to his right arm injury in 2012?

A. Based on the information I have, I am unable to determine a cause for the subjective complaints with regard to the left. And I do not have sufficient evidence

⁶ P.A.H. Trans. (June 6, 2016), Resp. Ex. 1 at 6-7.

⁷ Melhorn Depo. at 23.

⁸ *Id.*, Ex. 1 at 1.

to support that the treatment and/or injuries on the right that had occurred previously have caused his subjective complaints on the left.⁹

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(h) states:

“Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2011 Supp. 44-510k(a) states, in part:

(1) At any time after the entry of an award for compensation wherein future medical benefits were awarded, the employee, employer or insurance carrier may make application for a hearing, in such form as the director may require for the furnishing, termination or modification of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523, and amendments thereto.

(2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury, or (B) terminate or modify an award of current or future medical care if the administrative law judge finds that no further medical care is required, the injury which was the subject of the underlying award is not the prevailing factor in the need for further medical care, or that the care requested is not necessary to cure or relieve the effects of such injury.

K.S.A. 2011 Supp. 44-508(g) states:

“Prevailing” as it relates to the term “factor” means the primary factor, in relation to any other factor. In determining what constitutes the “prevailing factor” in a given

⁹ Melhorn Depo. at 40.

case, the administrative law judge shall consider all relevant evidence submitted by the parties.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.¹⁰ Accordingly, the findings and conclusions set forth reflect the majority's decision and the signatures below attest that this decision is that of the majority.

ANALYSIS

Two physicians, Drs. Fevurly and Melhorn, agree the May 30, 2012, injury by accident is not the prevailing factor causing claimant's left upper extremity complaints and need for medical treatment. Dr. Fevurly was hired by respondent to perform an evaluation. Dr. Murati, claimant's expert, is the only physician to find claimant's accident the prevailing factor causing his left upper extremity complaints and need for medical treatment. Neither Dr. Murati nor Dr. Fevurly are orthopedic surgeons.

Dr. Melhorn, the court-ordered neutral examiner, specializes in the treatment of hand disorders. Dr. Melhorn could not relate claimant's subjective complaints of left upper extremity pain and numbness to the May 30, 2012, injury.

Claimant's counsel had the opportunity to examine Dr. Melhorn about the opinions contained in his report. Dr. Melhorn confirmed his written opinion. Dr. Melhorn testified claimant's pain drawing was non-anatomical and implied symptom magnifying. Dr. Melhorn also testified claimant's two-point, light touch and vibratory touch tests were inconsistent bilaterally.¹¹

The weight of the evidence supports the ALJ's conclusion that claimant failed to prove that the right upper extremity condition is related to the May 30, 2012, left upper extremity injury.

CONCLUSION

Claimant failed to prove that his May 30, 2012, left upper extremity injury is the prevailing factor causing his right upper extremity condition.

¹⁰ K.S.A. 2015 Supp. 44-555c(j).

¹¹ See Melhorn Depo. at 27-28.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Thomas Klein dated September 12, 2016, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Hon. Thomas Klein, Administrative Law Judge